



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200929020

APR 22 2009

SE:TEP:RA:TI

Uniform Issue List: 402.00-00

Control Number:

Legend:

Taxpayer A =

Employer B =

Plan C =

Financial Institution D =

Account E =

Financial Institution F =

Amount 1 =

Dear :

This letter is in response to a request for a letter ruling dated March 4, 2009, as modified and supplemented by additional correspondence dated April 1, 2009, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from Plan C, maintained with Financial Institution D.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer, age 36 at the time of the distribution of Amount 1 from Plan C, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) was due to a mistake by Financial Institution F. Taxpayer A further represents that Amount 1 has not been used for any purpose.

Taxpayer A participated in Plan C, a profit sharing plan under section 401(a) of the Code, maintained by Employer B. Taxpayer A represents that in 2005, she terminated service with Employer B. On March 1, 2006, Taxpayer A met with an employee of Financial Institution F to discuss the transfer of her account balance in Plan C to an individual retirement account (IRA) CD. Taxpayer A completed the necessary paperwork for the transfer including instructions to the administrator of Plan C that her account balance be rolled over to an IRA CD with Financial Institution F. On March 21, 2006, a check totaling Amount 1 was deposited into Account E. In May of 2008, Taxpayer A asked Financial Institution F what was the account balance in her IRA CD, but was informed Account E was a non-IRA. An employee of Financial Institution F signed an affidavit acknowledging it was her error that caused Amount 1 to be deposited in a non-IRA account.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to the distribution of Amount 1.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience,

including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was caused by a mistake by Financial Institution F.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan C and Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered rollover contributions within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____, (I.D. # _____), at () _____.

Sincerely yours,

Carlton Wathens

Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

CC: